Filed 3/27/19 In re Liam O. CA1/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re LIAM O., a Person Coming Under the Juvenile Court Law.	
CONTRA COSTA COUNTY CHILDREN & FAMILY SERVICES BUREAU, Plaintiff and Respondent, v. KEITH O., Defendant and Appellant.	A153357; A154828 (Contra Costa County Super. Ct. No. MSJ1700774)
B.B. et al., Petitioners, v. THE SUPERIOR COURT OF CONTRA COSTA COUNTY, Respondent; CONTRA COSTA COUNTY CHILDREN & FAMILY SERVICES BUREAU ET AL., Real Parties in Interest.	A155768 (Contra Costa County Super. Ct. No. MSJ1700774)

This consolidated juvenile dependency matter involves four proceedings: (1) father's appeal from the disposition order (challenging both the court's finding of

jurisdiction and the disposition provision suspending his visitation with his child); (2) father's appeal from the six-month review order (challenging the court's finding that the social services agency had provided reasonable services); and (3) and (4) petitions for an extraordinary writ by both father and mother from the 12-month review order terminating their reunification services and setting a Welfare and Institutions Code section 366.26[1] permanency hearing. We conclude there is no merit to the various challenges. We thus affirm the jurisdiction, disposition, and six-month review orders, and deny the petitions for an extraordinary writ on their merits.

BACKGROUND

The Family, the Referrals, and the Petition

B.B. and Keith O. are, respectively, the mother and father of Liam O., the subject of this juvenile dependency proceeding.[2] The proceeding came about as a result of four referrals the Contra Costa County Children & Family Services Bureau (Bureau) received concerning Liam's welfare:

On October 27, 2016, the Bureau learned of an incident in which Keith and his father had gotten into an argument when Keith's father brought Liam home. While Liam was in his grandfather's car, Keith opened the door, reached across Liam, and punched the grandfather in the head. The two struggled, and Keith grabbed the grandfather's face and neck.

On May 31, 2017, the Bureau received information that Keith had left Liam unsupervised at a park while he walked to a marijuana dispensary. It was further reported that at unspecified times Keith was physically and verbally abusive to B.B. in Liam's presence.

On June 1, the Bureau was alerted that Keith may have mental health issues, drank alcohol and smoked marijuana in Liam's presence on a daily basis, and was violent with

[1] All statutory references are to the Welfare and Institutions Code.

[2] Keith also has an older son by another woman. Throughout this proceeding, he has been embroiled in a custody dispute involving that child.

others, sometimes in Liam's presence. It was further reported that that day, while Keith's mother was driving a car in which Keith and Liam were passengers, Keith began erratically shifting the gears, demanded his mother pull over and give Liam to him, and attempted to grab the steering wheel and crash the car into the guardrail.

On June 7, the Bureau was alerted that the previous day, Keith had told his parents he had barricaded B.B. in a bathroom and they needed to come and get her out. When they arrived, B.B. was climbing out a second story window and Liam was unsupervised in the backyard. When Keith saw his mother, he told her to get out and punched her in the head. As she walked away, he pushed her and hit her in the head, causing her to fall to the ground. He also pushed B.B. out of the house. Keith's father called 911, and when B.B. learned the police had been called, she encouraged Keith to hide.

Liam was taken into protective custody and placed with his maternal grandparents, and on June 29, the Bureau filed a section 300 petition alleging Liam, then two years old, came within the juvenile court's jurisdiction due to his parents' failure to protect him (§ 300, subd. (b)(1)).

June 29, 2017 Combined Detention/Jurisdiction Report

In a combined detention/jurisdiction report, the Bureau summarized the allegations that led to its involvement and detailed its investigation that resulted in the filing of the petition. Through its investigation, the Bureau had determined that Keith and B.B. were engaging in behaviors in Liam's presence that could put him at risk, including Keith's violence towards B.B. and his parents. Based on this, the Bureau recommended the court detain and take jurisdiction over Liam.

Detention and Contested Jurisdiction Hearings

At a June 30 detention hearing, the court ordered Liam detained, elevated Keith to presumed father status, and ordered one hour per week of supervised visitation for both parents.

On September 11, the matter came on for a contested jurisdiction hearing. At the outset, the court announced that both parents "would like to resolve the matter by way of entering a no contest plea to some amended language." Specifically, allegation b-2 was

amended to read, "The mother, [B.B.], has a substance abuse problem with marijuana, which impairs her ability to provide adequate care and protection for the child." Allegation b-3 was amended to read, "[Keith] has engaged in domestic violence in the presence of the child, placing the child at risk of serious physical harm."

The court was presented with "Waiver of Rights—Juvenile Dependency" forms "fully executed" by both parents. In the forms, B.B. and Keith confirmed they had read the petition, understood it, and wished to plead no contest, and they acknowledged the rights they were giving up by doing so. They also confirmed their understanding that if they pleaded no contest or submitted on the Bureau's detention/jurisdiction report, the court would probably find the petition true; if the court found the petition true and declared Liam a dependent of the court, the court might assume custody of him and it was possible no reunification services would be provided; and if they failed to regularly participate in court-ordered treatment, services might be terminated, their parental rights terminated, and Liam placed for adoption.

The court advised both parents that by pleading no contest they were giving up their right to appeal the court's jurisdiction finding. It inquired of B.B. and Keith whether they understood that right and gave it up. Both responded affirmatively.

The court then engaged in this exchange with Keith:

"THE COURT: Sir, your attorney has provided to me on your behalf what also appears to be a fully executed waiver of rights form. Are these your initials in these boxes down the right-hand margin of page one and your signature at the top of page two?

"[KEITH]: Yes, Your Honor.

"THE COURT: [Keith], did you have sufficient time to read through this form and discuss its content with your attorney?

"[KEITH]: Yes, Your Honor.

"THE COURT: Was she able to answer any and all questions that you had?

"[KEITH]: Completely.

"THE COURT: By placing your initials in these boxes are you indicating to me that you wish to give up these rights and enter a no contest plea to that language we just discussed?

"[KEITH]: Yes, Your Honor."

The court confirmed with Keith's counsel that she was satisfied Keith understood all of the rights he was giving up, that she joined and concurred in both the waiver and the plea, and that she stipulated there was a factual basis for a finding of jurisdiction based on information contained in the detention/jurisdiction report. The court engaged in a similar exchange with B.B. and her counsel.

B.B. then pleaded no contest to amended allegation b-2 and Keith to amended allegation b-3, and the court dismissed all remaining allegations. After that, the court made the following findings: "I find that both parents knowingly, willingly and voluntarily waived their rights to a contested hearing. I find their pleas are freely and voluntarily made with an understanding of the nature and the consequences of those pleas. I further find based on the stipulation of counsel as well as the Court's own reading of the detention/jurisdiction report that there is a sufficient basis for jurisdiction. Therefore, I accept your pleas. I hereby sustain and find proven true beyond preponderance of the evidence the allegations to which you plead." The court also found that Liam was a person "described by Welfare and Institutions Code Section 300(b)," meaning he had suffered, or was at a substantial risk of suffering, serious physical harm or illness as a result of his parents' failure to protect him.

The court ordered supervised visitation for both parents and continued the matter to October 23 for disposition.

Keith's Threats Against Bureau Employees and the Maternal Grandmother and Aunt

On October 12, the Bureau filed a request for a section 213.5 juvenile restraining order protecting Liam, the maternal grandparents, and social worker Taranjeet Sokhi from Keith. The request was based on a report from the maternal grandfather that Keith had threatened that "to kill the [Bureau's] agents . . . [a]ll 11 of them" and the maternal

grandmother and to " 'bash' the maternal aunt's head in." The grandfather also shared with the Bureau a recording of a July 15 conversation he had with Keith in which Keith launched into a profanity-laced tirade that included threats to kill the maternal grandmother and aunt. A transcript of the conversation was attached to the restraining order request. While we are reluctant to repeat Keith's vitriol here, we believe it is important to include selected passages to provide an accurate profile of Keith's conduct. Thus, with minor grammatical edits, Keith's verbal assault on B.B.'s father included the following:

"I know it's bullshit. You need to drop it, you need to stop making excuses for fucking [maternal aunt] and [maternal grandmother] you know. You need to really get it through your thick ass head. . . . Part of being a man is disciplining your women, and if you don't discipline them, if you don't want to discipline your women, I will discipline your women, including your wife. . . . You need to stop kissing the ass of the women that you have brought upon this world. . . . If you don't want your women to be physically disciplined by me including your wife then you better get them in line. I'm done with this shit. Do you hear me? I'm done disciplining your women. OK? [¶] . . . [¶] . . . You better fucking get a clue. I'm quite done with this shit, you hear me? I'm done with this fuckin bullshit and excuses. This, this has come to an end. . . . I have more respect for you than my father but every fuckin time it comes down to this already we find out you're your gonna back your dumbass women. . . . You hear me, if you don't get a handle on your women I'm gonna kill them. Do you understand? That's gonna be the next step. Do you like your wife? Do you like your daughter? . . . I am freakin fuckin tired of suckin up to bullshit that you and your dumbass fatass fucking wife created. . . . And it's gonna come down hard on your family. . . . You can fuckin think whatever you want but I'm the biggest threat your family has ever faced. So if you want your family to stay intact, if you wanna have grandchildren you better fuckin curb this shit right now. . . . And if you think this is unfair you go ask my parents because I have never been

physical with you or [maternal grandmother]. You go ask my parents because I've handled them way worse. . . ."[3]

Keith's visits with Liam were suspended. And on October 12, the juvenile court granted a temporary restraining order and set a hearing on the request for a restraining order for October 23, the same day as the disposition hearing.

October 18, 2017 Disposition Report

In its disposition report, the Bureau advised that it had provided B.B. and Keith referrals for alcohol and drug testing, substance abuse treatment, parenting education, domestic violence education, and mental health treatment, as well as information regarding transportation and visitation. B.B. was doing "well" participating in those services and addressing the issues that led to the dependency case. She had reportedly been attending weekly parenting and domestic violence classes. Between July 10 and October 5, she had nine missed drug tests, two positive and one negative result, and one insufficient sample. She had been visiting with Liam since July 7, and the visits were positive.

Keith had also begun to engage in services, including having attended four sessions at Men Creating Peace. He recognized he needed to work on his anger and wanted to learn how to better respond to B.B. While he denied hitting her or locking her in the bathroom, he acknowledged getting violent with his ex-wife but claimed she instigated it. He was attending therapy and had attended one parenting class but did not like how fatherhood was presented in that class so he did not return. Keith's visits remained suspended because of his death threat directed at the Bureau employees.

Keith reported having a significant mental health history, having been in and out of at least 22 psychiatric facilities, most recently two years earlier. He stopped taking the prescribed medications and started smoking marijuana instead, which led to him feeling

[3] It was explained at the disposition hearing that the phone call occurred in July after Liam was placed with maternal grandparents, but the maternal grandfather did not report it to the social worker until Keith threatened the grandparents, maternal aunt, and Bureau employees.

better. Between July 10 and October 5, he had nine missed drug tests, two positive results for marijuana, and three negative results.

The Bureau recommended that the court adjudge Liam a dependent, and order reunification services for both parents and continued visitation for B.B. As to Keith, however, it recommended the court find that visitation would be detrimental for Liam and order there be no contact between the two until Keith had completed a psychiatric evaluation, was engaged in the recommended treatment, and was meeting the objectives of his case plan.

The parents' proposed case plans required that they complete a mental health assessment, individual counseling to understand and address the factors contributing to the dependency, a domestic violence program, a parenting education class, and an outpatient substance abuse treatment program, and that they participate in random drug and alcohol testing. Keith's plan additionally required that he complete an anger management program.

Disposition Hearing and Hearing on the Request for a Restraining Order

On October 23, the matter came on for a hearing on disposition and the Bureau's request for a restraining order. The court issued a restraining order protecting Liam and his maternal grandparents, and maintained the temporary restraining order for social worker Sokhi.[4] It continued the issue of disposition to November 16 for a contested hearing, and ordered Keith's visitation to remain suspended pending the contested disposition hearing.

November 10, 2017 Report from Domestic Violence Liaison Steve Gray

Domestic violence liaison Steve Gray evaluated Keith on November 8. In his report, Gray described a persistent theme expressed by Keith during the evaluation as one of persecution and betrayal by his and B.B.'s parents, other relatives, the police, social

[4] Sokhi did not fall within the scope of individuals who could be protected by a section 213.5 restraining order. (§ 213.5, subd. (a).) The court thus maintained the temporary restraining order in place while the Bureau requested a civil harassment restraining order on Sokhi's behalf. The Bureau subsequently filed such a request, which the court granted.

workers, and his employers. Keith told Gray his violence was " 'extremely understandable' " and that a lot of his anger was because he " 'must defer to female authority . . . .' " He also told Gray that he had been using marijuana to regulate his anger but had stopped due to the requirements of his case plan.

According to Gray's summary, Keith reported that he was first referred for psychiatric care when he was in kindergarten or first grade. When he was in fourth grade, he was " 'put in John Muir in a kiddie (mental health) hospital . . . [and] was put on a ton of medications that should never have been prescribed . . . .' " Asked what behaviors his parents and school officials had witnessed that led to such extreme actions, Keith denied any extreme behaviors, claiming they overreacted and the actions were intentionally punitive. He had seen 12 to 15 psychiatrists over the years and had been diagnosed with Tourette's syndrome, hyperactivity, ADD, and ADHD. It had been suggested he may be bipolar, and he believed he has Asperger's syndrome. Gray did not have enough information to provide a diagnosis, but he believed Keith's presentation had "the flavor of schizophrenia."

Gray believed a full qualitative history and psychiatric examination were necessary to formulate an effective treatment program. Keith had "concretely demonstrated that he can be dangerous to others," and any threats he made should be taken seriously and dealt with assertively. While Gray doubted he would resort to extreme, indiscriminate violence, he believed that once Keith identified "a person as a rejecting, hostile object, that he may very well inflict physical violence on that person" because "he is either organically unable to self-regulate, or his cognitions inform him that his responses are appropriate."

Gray believed it was appropriate for Keith to have "supervised or therapeutic visits" with Liam while receiving "concurrent, defined clinical care himself."

November 13, 2017 Disposition Update

In a November 13 disposition update, social worker Sokhi advised that she had been consulting extensively with Gray and Keith's service providers. Her summary of what Gray reported to her was largely consistent with what he related in his report.

According to Sokhi, however, Gray also told her that Keith said he saw similarities between himself and "the Texas shooter," elaborating that he anticipated further persecution because the shooter was a young, white male and had a prior arrest for domestic violence. According to Gray, however, Keith did not suggest he was intending to replicate the shooter's conduct or that the shooter's behavior was justifiable, defensible, or understandable.

Sokhi also summarized information she received from others, including Keith's therapist, who described Keith's long history of attacking family members and his total inability to hold a job because he was unable to take directions from others; the program director of Men Creating Peace, who was " 'speechless' " to learn about Keith's threats against Sokhi and the maternal grandparents; Keith's mother, who related that at unspecified times Keith had pushed her down a flight of stairs after hitting her on the head, had attacked his maternal aunt, his father, and B.B.'s sister, and was abusive to B.B.; and B.B.'s father, who reported that when he was recently with B.B., she told him, " 'I don't know why they're trying to break us apart while we're perfectly happy together,' " claiming their relationship was "just fine" and "normal."

The update maintained the Bureau's recommendation that visitation between Keith and Liam remain suspended and that the court adjudge Liam a dependent child, order reunifications services for both parents, and adopt the Bureau's proposed case plans.

November 16, 2017 Contested Disposition Hearing

At the November 16 contested disposition hearing, Keith's counsel advised that the only requirement in the proposed case plan that Keith was challenging was the substance abuse program, since the substance abuse allegations against him had been dismissed and his drug tests had been negative. The court agreed to strike the drug treatment requirement for both parents, subject to the caveat that they would be required to continue testing, with a positive or missed test triggering a treatment program requirement. The court also believed, consistent with Gray's report, that Keith needed a "comprehensive psychiatric evaluation" with a medication assessment.

Turning to the issue of visitation, the court stated it was inclined to order that Keith's visitation remain suspended until he had "fully engaged in mental health services and demonstrated that he is addressing the issues that brought this matter before the court in the first place, which is rather significant domestic violence."

Counsel for Liam agreed visitation would pose a significant risk of physical and emotional harm to Liam and requested that visits remain suspended until Keith had completed a psychiatric evaluation and received recommendations for treatment. She also argued Liam's placement should be changed to a confidential location given the ongoing tension between Keith and the maternal grandparents. County counsel concurred, while B.B.'s counsel opposed changing Liam's placement, suggesting instead that the grandparents relocate to a confidential location.

Counsel for Keith contended that visitation was the most critical component of the reunification plan and the court could not deny visitation because it believed it was not in Liam's best interest. Rather, counsel argued, it could only be denied it if actually jeopardized his safety, and there was no evidence Keith would harm Liam if he became upset during a visit.

The court responded that it did not have to allow visitation if there was evidence Liam would be at risk of harm. It observed that while Keith loved him, there was a question about his mental stability, particularly in light of the threats he made against Sokhi and the maternal grandparents. Given his volatility and the possibility he could be triggered by something and harm someone in Liam's presence, the court believed Liam would be squarely at risk of harm.

When Keith's counsel disputed there was evidence of a specific threat to Liam, county counsel pointed to Keith attempting to grab the steering wheel from his mother when she was driving, Keith spanking B.B. in front of Liam, and his threats to the maternal grandparents, who were Liam's caregivers. She also noted that Gray stated in his report that once Keith identified a person as rejecting or hostile, he may inflict physical violence upon that person and that he could be dangerous in certain circumstances because he was unable to self-regulate.

When Keith's counsel represented that Gray thought visits should continue, counsel for Liam pointed out that what Gray actually recommended was closely monitored visits that were concurrent with clinical care, which was essentially what the Bureau and counsel for Liam were asking—that visitation resume once Keith had undergone a psychiatric evaluation and was engaged in treatment.

At the conclusion of argument, the court followed the recommendations of the Bureau, declaring Liam a dependent child and ordering family reunification services for both parents. Their case plans included individual counseling, random drug/alcohol testing, and completion of a domestic violence program and a parenting education class. Additionally, B.B.'s case plan required a mental health assessment, while Keith's plan required an anger management program and a comprehensive psychiatric evaluation.

As to visitation, the court ordered weekly one-hour supervised visits for B.B. As to Keith, however, it found that visitation would be "detrimental to the safety [and] well-being" of Liam, and ordered no visitation until Keith had completed a psychiatric evaluation, was engaged in the recommended treatment, and was meeting the objectives of his services plan. The court also ordered Liam removed from his maternal grandparents and placed in a confidential foster placement. The matter was continued to April 30 for a six-month review.

On January 9, 2018, Keith appealed the disposition order, specifically, "the finding that contact between father and the child is detrimental to the child, and there be no contact with father until certain conditions are met" (No. A153357).

March 5, 2018 Resumption of Visitation for Keith

On March 5, the matter came on for hearing at the request of Keith's counsel due to the fact the Bureau had not yet arranged Keith's psychiatric evaluation and, as a result, his visitation had not resumed. The court acknowledged Keith had been on the waitlist for the evaluation for "sometime now," and in light of a representation by social worker Brian Coughlin (Sokhi's replacement) that Keith had "earnestly" been participating in individual therapy, the court was inclined to resume visitation, provided it was supervised by Coughlin or another male professional designee. It thus ordered that supervised visits

of one hour per week were to be arranged for Keith "so long as father is fully participating in services including his therapy." The court also ordered the Bureau to secure an appointment for a psychiatric evaluation with its usual provider within one week, and if unable to do so to secure an appointment with another provider at the Bureau's cost.

April 26, 2018 Six-month Review Report

By the time of the six-month status report, Keith had started his psychiatric evaluation. He had his first appointment on April 23 and was to meet weekly with his evaluator until the evaluation and treatment recommendations were complete. He had also begun supervised visitation earlier that month and had visited Liam three times, with positive interactions and no concerns reported.

Keith had also made "some progress" on other components of his case plan. He had been taking parenting classes through C.O.P.E. Family Services (C.O.P.E.) and needed to complete three more sessions in order to receive his certificate of completion. The director of C.O.P.E. believed Keith would benefit from working individually with a therapist to complete his remaining classes and practice the skills he had learned. He had been attending anger management and domestic violence classes through Men Creating Peace but stopped going because of his work schedule and was dropped from the program. He was hoping to work on anger management and domestic violence prevention through individual therapy with his C.O.P.E. therapist. Additionally, due to his work schedule, he had not drug tested since November 2017. He had three negative tests in November and reported that he was drug tested before being hired at his current job and was subject to random drug testing through his employer.

B.B., who was working fulltime while taking two classes at a junior college, had made "significant progress" toward completing the services outlined in her case plan. She had maintained regular visitation during the reporting period, and all visits had gone very well. She had completed a parenting class and attended at least seven domestic violence group sessions. She had attended 15 therapy sessions since January, with the therapist reporting the sessions had gone well. The therapist did not think B.B. would

benefit from additional domestic violence classes because she had been very open during her therapy sessions in discussing the dynamics of her relationship with Keith and other issues around domestic violence. The therapist intended to work with B.B. during the next reporting period to develop a domestic violence relapse prevention plan.

The one area in which B.B. had struggled was drug testing. She had four negative tests in November 2017 but had not tested since then due to her schedule and a system error at the testing facility. The error was resolved, and on January 23, 2018 B.B. was advised to resume testing, but she had not done so due to schedule demands.

B.B. reportedly recognized the challenges in her relationship with Keith and continued to work towards creating a safe and healthy relationship with him while trying to reunify with Liam. She realized, however, she was further along in her services than him and was willing to move out of the home they shared in order to reunify with Liam. She was exploring alternative housing options so she could have unsupervised visits with Liam and move towards reunification.

The Bureau recommended that the court find reasonable services had been provided and there was a substantial probability Liam would be returned to B.B.'s care by August 30, and order continued services for both parents.

Contested Six-month Review Hearing

A contested six-month review hearing was held on June 11. Counsel for Keith objected to the recommendation that the court find it had provided reasonable services, an objection based on the delay in scheduling the psychiatric evaluation and the fact that visits had been suspended for approximately four months until the court ordered the Bureau to resume visits.

County counsel responded that while the psychiatric evaluation was delayed and visits did not resume until April 3, there was no evidence the evaluation would have changed anything given that Keith had been provided other services in which he had not been participating. Asked by the court what services the Bureau had provided, counsel identified parenting, anger management, and domestic violence classes, drug testing, and the referral for a psychiatric evaluation, although actually scheduling the evaluation was

admittedly delayed. The court stated it wanted more information about the services provided, and social worker Coughlin was called to testify. He testified as follows:

Keith was referred to anger management and parenting classes and drug testing immediately after detention. He tested with negative results until approximately December 2017, when he stopped testing. He had been taking classes through Men Creating Peace, but he was unable to complete the program due to his work schedule.

At disposition, the court had ordered the Bureau to provide a psychiatric evaluation, drug testing, individual therapy, and anger management and domestic violence classes. Keith had started classes at C.O.P.E. in approximately February but had not completed the last three classes, so the Bureau had referred him to an individual therapist at C.O.P.E. to finish the three classes and then continue with the therapist for individual therapy. As far as Coughlin was aware, Keith had not completed the classes with the therapist, although the therapist had attempted to contact him.

On April 23, Keith had attended his first appointment for a psychiatric evaluation, and a second appointment two weeks later. He missed a third appointment on May 21. When Coughlin spoke with Keith around that time, Keith said he was not sure he wanted to continue with his services. He told Coughlin he would get back to him about it, but Coughlin had not heard from him. Accordingly, another psychiatric appointment tentatively scheduled for June 4 did not happen.

Following this testimony by Coughlin, argument resumed, with counsel for Keith again arguing the Bureau had not provided reasonable services because the psychiatric evaluation was not scheduled in a reasonable amount of time and visits had been suspended pending Keith's completion of that evaluation.

County counsel argued that the court was not compelled to find that the Bureau had not provided reasonable services just because it did not provide all services within the six-month review period. The Bureau was asking the court to find, at least as of the time visits began, that it had provided reasonable services.

The court then turned to the recommended findings in the Bureau's six-month review report, noting that the proposed finding that the parents had consistently and

regularly visited with Liam was not appropriate. It also noted there was no recommendation about visitation. Accordingly, it passed the matter to allow counsel and Coughlin to discuss a recommended visitation schedule. In the meantime, because Keith had not recently drug tested, the court ordered that he test before the case was recalled.

When the court recalled the matter two hours later, it observed that it had passed the matter to have Keith drug tested because "in my view, and looking at father here today and his red eyes, I believe he appeared as if he might have been using substances. I know he has a history of chronic marijuana use. He has not been testing. [¶] I passed this for 2 hours. He has failed to provide a sample which I believe is a deliberate refusal to submit to testing today." The court then found reasonable services had been provided to the parents: "I do find that the [Bureau] has provided reasonable services in this case. I find that by clear and convincing evidence. The underlying issues relate to domestic violence and also substance abuse issues and father's mental health issues. Father has been provided a number of referrals to all of these services, some of which he has failed to avail himself of including testing, participation and completion in parenting, domestic violence and anger management. I do not fault the [Bureau] for the delay in the psychiatric evaluation as I know there was a funding issue and they've had to make multiple referrals."

The court ordered continued reunification services for both parents and substance abuse treatment for Keith. As to visitation, it ordered one hour per week for B.B. that could, at the Bureau's discretion, be unsupervised, and one hour per week for Keith that was to be supervised by the Bureau or a professional designee.

On July 11, Keith appealed the June 11 six-month review order (appeal No. A154828).

August 10, 2018 12-month Review Report

In an August 2018 12-month review report, the Bureau reported that the family's housing arrangements were the same as during the prior reporting period: Liam was

living with his maternal grandparents,[5] and B.B. and Keith continued to live together. B.B. was maintaining consistent visitation, having progressed to weekly, eight-hour, unsupervised visits. Keith had had nine positive visits with Liam. He had missed four visits, two because he was distressed over the services he still needed to complete and because he felt the court, the Bureau, and his family were colluding to prevent him from reunifying with Liam.

As with the prior reporting period, B.B. had made "significant progress" towards completing her case plan, continuing to engage in services. The Bureau was concerned, however, that she had had a year to find alternative housing but had not done so, which suggested she was unable to separate from Keith. She had previously inquired about moving in with the paternal grandparents, which was not ideal because of Keith's volatile relationship with his father. Keith's father had offered to move out of the home if that would facilitate Liam's return to B.B.'s care, but that had not occurred. Additionally, the maternal grandparents were willing to allow B.B. to live with them and had also reported they had a cousin who would allow B.B. to live with her for low rent. The Bureau hoped B.B. would find alternative housing so she could have overnight visits with Liam away from Keith and complete the reunification process.

Keith, on the other hand, had only made "minimal progress" on his case plan. He had struggled to follow through with services, in part due to his work schedule. During the reporting period, he had missed 12 drug tests and tested positive for marijuana on one occasion. He had been referred to three outpatient drug treatment programs, but he reported that none of the programs would accept his insurance so he instead planned to attend a program through Kaiser, although the Bureau was not aware of him having started it. He had completed a parenting class and had attended the first of 12 therapy sessions to address his mental health and anger management issues.

As noted at the six-month review hearing, Keith began the psychiatric evaluation process in April, but failed to pursue it in May and early June because he did not know if

[5] He had been returned to their care in December 2017 after they moved to a confidential location.

he wanted to continue with services. Since then, scheduling issues had arisen for the evaluator, so the Bureau had obtained a referral for a different evaluator but did not know if that evaluator had been in contact with Keith.

The Bureau recommended continued reunification services for both parents.

Contested 12-month Review Hearing

The matter came on for a 12-month review hearing on September 13, 2018. Noting that B.B. had finally moved out and was living with Keith's parents, the court nevertheless expressed concern that she and Keith had apparently attended a concert together two weeks earlier. From this, the court concluded the relationship was not over and B.B. had not chosen to parent Liam without Keith, but rather was just waiting until the court and the Bureau were out of her life so she could resume living with him. The court wanted to hear from B.B. how the relationship was working and how Liam could be safe with his parents in an intact relationship. Accordingly, it continued the matter for a contested review hearing.

The contested 12-month review hearing was held on October 22 and 29, 2018. At the October 22 hearing, which Keith did not attend, the court announced that it was not inclined to follow the Bureau's recommendation that it continue services to the 18-month mark. It then heard testimony from social worker Coughlin and B.B.

Coughlin testified that he believed B.B. had "completed everything in her case plan." On August 15, she had moved out of the home she shared with Keith and was living with his parents, where she had her visits with Liam. Coughlin agreed it was somewhat concerning she had continued to live with Keith during the first 12 months of the case, and it was also concerning she had moved in with Keith's parents despite the violent relationship he had with them.

In the time Coughlin had been handling the case, B.B. had approximately 40 drug tests with negative results. She had taken domestic violence courses and attended a significant amount of therapy, which she was still doing two times per week. He was unaware of continuing issues with domestic violence, and her therapist believed she had learned a lot of skills regarding domestic violence. She had attended parenting classes

and the results were demonstrated in her visits with Liam. He believed she should continue to receive services because she had actively engaged in the services and made significant progress on her case plan. She evidenced her insight by acknowledging that Keith had unaddressed mental health issues and that she had in the past tried to care for him when Liam should have been her first priority. Coughlin believed there was a substantial likelihood Liam would return to her care by the 18-month review date of December 30 and she should be given the opportunity to reunify.

As to Keith, when Coughlin prepared the review report, he believed Keith should continue to receive services because he was engaging in services and there was a substantial likelihood Liam would be returned to his care by the 18-month mark. Due to the lack of engagement since then, however, Coughlin no longer believed that to be the case. Keith had not drug tested since July 2018 and was not participating in the psychiatric evaluation, despite that the evaluator had attempted to contact him on multiple occasions.

B.B. testified she moved in with Keith's parents in mid-August, approximately two months before the hearing, and was having 48-hour overnight visits with Liam. Asked why she had waited so long to move out, she answered that it had not been suggested early on that she should move out, and up until that point, she believed they were working together to reunify as a family. Moving in with her parents was not an option since Liam lived there. The possibility of living with her cousin had only recently been mentioned to her, and when she spoke with her parents about it, she learned it was just their idea and her cousin had never mentioned it. She did not then reach out to her cousin because her cousin was losing her home.

At the outset of the case, B.B. had told the social worker that she believed Keith was "messed up in his head" because of how his father treated him while he was growing up. She now believed most of his mental health issues were due to the custody battle concerning his older son. She was not worried about getting involved in a custody battle over Liam, as she did not think Keith could ever pursue custody if Liam were returned to her care.

As to violence inflicted by Keith, B.B. acknowledged an incident about four years earlier when Keith attacked his father and the incident when he had locked her in the bathroom and pushed his mother. B.B. denied Keith ever gave her a black eye, claiming that on one occasion Liam had thrown a toy that hit her in the eye and on another she had tripped and hit her eye on the corner of a chair. She acknowledged Keith had once spanked her in front of Liam and Liam had told him not to hit her. She agreed that constituted domestic violence, but she did not report it to the police because it did not happen again and she did not believe there was any further danger. She acknowledged Liam should not have to protect her from his father, but she did not think him seeing that incident placed him at a risk of harm because Keith would never physically harm him.

B.B. believed she had benefitted from the many services in which she participated, including learning about the dynamic of domestic violence and that domestic violence could be emotional. A letter from her therapist confirmed that her attendance in therapy was "excellent," and she had completed all of her requirements, gained insight into domestic violence, and learned how to cope with stressful situations.

Turning to her relationship with Keith, B.B. acknowledged it took her a long time to move out of the home she shared with him. Since then, she had been feeling less anxious. Before, when she came home she did not know what Keith's mental state would be; now, she could focus on Liam, school, and herself. Since going to the concert with Keith, she had seen him a "few" times when she went to their apartment to pack up her belongings. On one recent occasion when she went to the apartment, Keith was having a stressful day and was angry; an hour later, he was hyper and excited. She realized it was good for her to not have to deal with his fluctuating emotions, and she no longer believed it was her job to take care of him.

B.B. acknowledged she was supposed to create a safety plan with her therapist but had not yet done so. She believed it would be more relevant if she and Keith were still living together. Since they were not, if he showed up, she would just call the police. She had not contemplated getting a restraining order against him, although his parents had one.

If afforded two additional months of services, B.B. would continue doing what the Bureau recommended. She had been doing everything that had been asked of her, not just because it was required but because she could see an improvement since the case began. She had learned to be more assertive, especially in communicating with Keith.

At that point in B.B.'s testimony, court concluded for the day, and the matter was continued to October 29. On October 24, however, Coughlin submitted a memorandum updating the court on an incident that had occurred two days earlier, on the first day of the contested review hearing. As Coughlin described it, Keith's visit on the afternoon of October 22 had to be canceled because the maternal grandparents were going to be attending the hearing and could not transport Liam to the visit. Keith was told he would receive additional time at his next two visits to make up for it. The morning of October 24, Keith told Coughlin it was not okay for the grandparents to cancel his visit, there needed to be a " 'consequence,' " and he would have to " 'take matters into his own hand.' " Keith sent Coughlin several text messages that day, including ones that stated:

— "So that conversation got me nowhere this morning. So I'll be taking matters into my own hands ASAP. I guess we all make our choices in life eh? You ALL have made yours. I'm done taking deep breaths so everyone else can keep up their bullshit."

— "You CANNOT tell someone in my position to keep sucking it up and there's nothing that can be done. No one wants to make the difficult decisions or take responsibility? Fine. Then people have no right to complain when someone does something about it."

— "Hey thanks again for helping me out this morning. Things are very much improved and it sounds like this is going to be brought up in court on Monday and hopefully [B.B.] loses reunification services and Liam gets adopted out to a family who abuses him. [¶] Pretty sad that they're going to end reunification services for [B.B.] on Monday over a lie. They didn't believe me when I said I'd never abused Liam or [B.B.], by that logic they'll actually believe me if I say [B.B.] lets me see him when she hasn't. See that's the problem, Brian. You can't help people or do any good while working

within the confines of a system that has that much of anethema [*sic*] to facts, truth, reason or honesty."

Coughlin's memorandum also advised that later that same day, he received a call from B.B. who informed him that Keith called her to say he was going to tell the Bureau that she and Keith's parents were allowing Keith to be at the parents' home when Liam was there for visits, in violation of court orders and the restraining order. B.B. also told Coughlin that Keith sent a text message to his mother stating, " 'I made up a total lie that she's been letting me see [Liam]. [¶] I want him in foster care." A copy of the text message confirmed that Keith sent the text as B.B. reported.

At the end of the memorandum, Coughlin summarized: "It is clear from the text messages that [Keith] sent to both the undersigned and [his mother] that he has made minimal progress in alleviating the circumstances that brought this case before the Court. He has stated that he is going to lie about seeing Liam at the paternal grandparent[s'] home and reported this to Child and Family Services in an attempt to have the child placed in non-relative foster care. It was confirmed that [Keith] did call the Contra Costa County Child Abuse Reporting Hotline on Wednesday, October 24th, 2018, at approximately 11:15 [a.m.], and the following contact note was entered: [¶] *Father called to report Mother is allowing Father to see Liam during visitation. Father stated he is not supposed to have visitation with Liam because he is a 'direct threat' to Liam and Mother has a restraining order against Father. Father stated Liam is not safe and needs to be in foster care."*

In light of these developments, the Bureau was now recommending termination of Keith's services.

The contested 12-month review hearing resumed on October 29, again without Keith's presence.[6] The court informed everyone that it had received Coughlin's memorandum, and B.B. continued her testimony:

[6] B.B. testified that she believed he had checked himself into a hospital the previous weekend.

B.B. had learned from her domestic violence program that domestic violence involves multiple types of violence. Nevertheless, she insisted that there had only been two incidents of physical abuse between her and Keith, and maintained that most of the abuse had been emotional. She had also learned that abuse is typically a learned behavior so it is important a child not see those behaviors. She added that the domestic violence program was difficult for her because most of the other women in the program had been subjected to extreme physical abuse, so it was hard for her to talk about what she was going through because it did not seem as bad and the other women were not comfortable talking in front of her because they felt like she was not being honest about the abuse she had experienced.

B.B agreed it can take a while to separate from a domestic abuser, but she disagreed it took her seven years (the length of her and Keith's relationship) because most of the abuse was "pretty recent." She had not prepared a safety plan because she understood that usually meant having a bag packed and money set aside in case she needed to leave, but she was in a safe place and no longer living with Keith so she did not think it was necessary. Coughlin had told her she would receive help at her domestic violence program and from her therapist with preparing a safety plan, but no one had helped her, so she would revisit the issue with her therapist. She did not think she needed a restraining order against Keith because he refrained from contacting her when she told him not to.

As to the incident described in Coughlin's update, B.B. testified that as soon as she learned about Keith's text to his mother, she contacted her attorney and Coughlin to tell them that she was not in fact letting Keith see Liam during her visits. Despite this incident, she believed she could keep Liam safe from Keith because he did not come to the house, there was a restraining order keeping him from the house, and he had not tried to contact her. She agreed that Keith falsely reporting that she was letting him have unauthorized access to Liam was abusive.

B.B. also testified that "[a]s of right now," she did not intend to reunite with Keith if Liam were returned to her care. She acknowledged, however, it could be possible in

the future if he resolved his mental health issues. Over the past month, she had spoken with him a "few times" a week so they could update each other on how Liam was doing during visits and to discuss bills because some of their finances were still connected.

Following evidence, the court heard argument from counsel. County counsel argued services for B.B. should be continued two more months, to the 18-month mark. She noted that B.B. had "done a huge amount of work," had consistently engaged in services and visited Liam, had demonstrated the ability to live separately from Keith and provide safety for Liam, and now had awareness about issues involving domestic violence. Counsel believed there was a substantial probability Liam would be returned to B.B.'s care by December 30 and that her progress would accelerate now that she had separated herself from Keith.

Counsel for B.B. concurred, adding that B.B. had "done everything," "come a long way," and demonstrated growth. She believed B.B. had finally realized she had to do it on her own, and there was a substantial probability of return by the 18-month mark. She also believed it was in Liam's best interest because their visits were "fabulous" and he was starting to see her as his mother. Counsel concluded that "this is a kind of case we give people a chance to reunify, especially in light of what we've all frankly had to endure from" Keith.

Counsel for Liam disagreed there was a substantial probability of return by December 30. She labeled as "chilling" B.B.'s testimony that, " 'As of right now, I wouldn't go back to Keith.' " She also pointed to the fact that B.B. had contact with Keith up until the prior week. While she acknowledged B.B. had made "some progress," counsel argued she was still in "complete denial," acknowledging only two physically abusive and two or three emotionally abusive incidents between her and Keith. Counsel did not believe that what B.B. had learned about domestic violence had "taken hold," and she did not believe the cycle of violence between her and Keith was over.

The court then ruled, declining to follow the Bureau's recommendation. It pointed to B.B.'s testimony that she had not contemplated seeking a restraining order because Keith did not come to her home and that Liam seeing Keith physically abuse her did not

place Liam at risk of harm because Keith would never physically harm Liam. According to the court, that and other testimony by B.B. showed her "complete lack of insight and accountability as to what led to the Court's intervention in the first place, that as of right now, no she doesn't contemplate going back to [Keith]. And she's been in constant contact with [Keith], constant, several times a week. She hasn't at all separated from [Keith]. In fact, she gives him reports and updates about Liam and she checks in on his visits."

The court detailed the history of Keith's threats and the restraining orders, and noted that despite B.B.'s awareness of this, she still did not think Keith presented a risk of harm. She had continued to live with him, only recently moving out and even then she still went to a concert with him. After reading Keith's threatening telephone call to the maternal grandfather into the record, the court observed:

"[B.B.] says she's never seen father so unstable as what she saw in these [phone] messages. And this is the same mother, [B.B.], who saw her husband assault his father, assault his mother, who spanked her in front of her own child, but claims the child was never really at risk of harm, she doesn't need a restraining order, and that it would be a good idea to live with the very parents that he acknowledges he's handled much worse.

"In my view, [Keith] has and continues to be a very unstable, ill individual, who by the very existence of these proceedings where the custody of his child is at issue, he presents a significant risk of harm. And mother who has gone to STAND doesn't get it. She doesn't understand any of that. In fact, her abuse wasn't that bad, so she couldn't really connect with the other people participating in that program because her abuse really hasn't been that bad.

"I actually think [Keith] is at a level that I'm not sure I've seen in this courtroom. I think he will stop at nothing and [B.B.] has not disconnected herself from that. In fact, she feeds the fire every week with her multiple interactions with [Keith]. And she waits until we're on the 12-month review to move out.

"I don't understand the [Bureau]. I don't understand the [Bureau's] analysis at all. I think it's completely ill[-]informed and not based in fact in any way.

"So I am not going to follow the recommendation of the [Bureau] as it relates to continuing services to [B.B.]. [¶] . . . [¶]

" . . . [B.B.] has no protective capacity because she doesn't even articulate what the harm has been and what the harm continues to be. [¶] And one of the things the Court has to analyze in terms of extending services to the 18-month mark is whether or not there's been significant progress in resolving the problems that led to the removal. There has not been significant progress. There's been some progress, but not significant in my mind.

"Has the parent demonstrated the capacity and ability to complete objectives of the treatment plan and provide for the child's safety, protection, physical and emotional health and special needs? No. She has not. She's checked off boxes. She's engaged in services, but she has not met the objectives of her case plan, not even close."

Based on the foregoing, the court terminated reunification services for both parents and set a section 366.26 permanency hearing for February 11.

The court then turned to the issue of visitation, soliciting input from the parties. County counsel recommended "[m]aybe twice a month," a recommendation with which Liam's counsel agreed. Counsel for B.B. requested that the court leave B.B.'s visitation as it was, including that it remain unsupervised. Deciding that it would be ordering supervised visits for B.B., the court explained, "[A]pparently it's not as chilling to anyone else in the room, but it is chilling to me that [Keith] uses the word consequence. There needs to be consequence for the maternal grandparents not taking the child to the last visit when they came to court. This is a high risk case, period. And I do not believe unsupervised visitation is in this child's best interest. In fact, I think it places him at . . . risk of harm." The court then ordered a minimum of one hour twice a month, supervised, for B.B., and one hour once a month, also supervised, for Keith.

B.B. and Keith both filed timely petitions for an extraordinary writ.

DISCUSSION

Case No. A153357

Keith's first appeal is from the November 16, 2017 disposition order in which the juvenile court ordered reunification services but maintained the suspension of his visitation. His argument is twofold: (1) the jurisdiction finding was erroneous because the court's practice of taking jurisdiction based on a parent's admission or no contest plea to the factual allegations in the petition is a "legal fiction" that is not supported by statute or case law and contravenes public policy, and (2) the court's denial of visitation in its disposition order was an abuse of discretion. Both arguments lack merit.

Keith's first argument consumes an astonishing 45 pages of his opening brief. In the midst of those pages, he summarizes the argument this way:

"Our current section 300 descriptions make it clear that the focus of the jurisdiction determination is on whether, as a result of some conduct or condition of the parent, *the child* is suffering a defined type of serious harm or is at substantial risk of such harm. An obvious corollary is: The jurisdiction determination requires more than findings that the parent has acted or failed to act in certain ways. It requires findings as to the type of harm the child has suffered or is at risk of suffering, the existence of a causal connection with the parent's conduct or condition, and an evaluation of whether the harm is serious enough or the risk is substantial enough to make state intervention 'reasonably necessary.' [Citations.] An obvious corollary of *that* is: A dependency determination cannot be based solely upon a parent's admission that he committed the conduct alleged, or a parent's plea of no-contest as to the alleged conduct. Specifically:

"Under [section 300,] subdivision (b)(1), it is simply not possible to adjudicate a child court-dependent based on that the parent committed certain acts or omissions. The court must determine that *the child has suffered*, or there is a *substantial risk* that the child will suffer, *serious* physical harm or illness, *as a result of* the parent's failure or inability to *adequately supervise or protect* the child, or the parent's failure to provide the child with *adequate* food, etc., or the parent's failure to provide *regular* care for the child *due to the parent's mental illness, developmental disability, or substance abuse.* (§ 300,

subd. (b)(1).) Finding that the parent committed certain acts or omissions is not enough. The court must find true facts that show that as a result of the parent's conduct the child suffered serious physical harm or there is a substantial risk that he will suffer such harm. [Citations.]

"Therefore, to determine a child described by subdivision (b)(1) on the basis of the parent's admission or plea of no contest to his alleged acts or omissions rests on a 'legal fiction' that subdivision (b)(1) does not require the court to determine more than that, *and* the effects of this procedure systemically contravene the intended operation of the dependency scheme by pretending that the juvenile court does not need to make findings and evaluations as to whether, as a result of the parental conduct or omissions to act, the child has suffered serious physical harm or is at substantial risk of suffering serious physical harm. Adjudication based on the parent's conduct alone returns the determination to the juvenile court's subjective values, and as a result adjudications by a parental plea are more likely to be unwarranted. Because of its inaccuracy and because it results in a determination of dependency jurisdiction that is insulated from appellate review, adjudication by parental plea invites an 'unseemly' use, i.e., to adjudicate a child court-dependent based on a parent's negotiated 'plea' when the facts of the case do not support that the child is described by subdivision (b)(1)." We easily reject Keith's creative theory.

To begin, as detailed at length above, the court thoroughly questioned Keith and B.B. about their waiver of rights forms and their no contest pleas to ensure that they were knowingly and willingly entering into their pleas with full awareness of the potential consequences. As part of that questioning, the juvenile court expressly advised they would be waiving their right to appeal the jurisdiction finding, and both confirmed they understood. As Keith's ultimate objective here is reversal on the ground the jurisdiction finding was unsupported by substantial evidence, his unequivocal waiver of his right to appeal that finding bars this argument. (See *In re N.M.* (2011) 197 Cal.App.4th 159, 167 ["An admission that the allegations of a section 300 petition are true, as well as a plea of

no contest to a section 300 petition, bars the parent from bringing an appeal to challenge the sufficiency of the evidence supporting the jurisdictional allegations"].)

Moreover, Keith forfeited his argument by failing to object below. (*In re Richard K.* (1994) 25 Cal.App.4th 580, 590 ["As a general rule, a party is precluded from urging on appeal any point not raised in the trial court"].) As explained in *Steve J. v. Superior Court* (1995) 35 Cal.App.4th 798, 810–811: "Failure to preserve an issue in the trial court by means of an appropriate request ordinarily will preclude a party from raising the point on appeal. [Citation.] It is unfair to the trial court and the adverse party to give appellate consideration to an alleged procedural defect which could have been presented to, and may well have been cured by, the trial court." Here, Keith did not object at the September 11, 2017 hearing when he entered his no contest plea. Had he at that time expressed his belief that the juvenile court lacked the authority to take jurisdiction over Liam based on the parents' pleas of no contest, the solution would have been simple: he could have foregone his change of plea and proceeded with a contested jurisdiction hearing. He did not do so, however, and he forfeited his right to now challenge that procedure.

Keith argues that he should not be held to have waived or forfeited this challenge because "a claim that the trial court erred because it acted in excess of its jurisdictional authorization to act—as [he] makes here—is not forfeited by a failure to object below, or even waived by acts that could constitute affirmative waiver or estoppel, if the act in excess of jurisdiction contravened the intended operation of the applicable statutory scheme or offended public policy." The court did not act in excess of its jurisdiction, however, as Keith's entire challenge to the procedure followed by the court is utterly frivolous.

While we view it unnecessary to address the minutiae of Keith's claim, we do note that the procedure the court followed here is expressly authorized. California Rules of Court, rule 5.682 authorizes a parent in a dependency proceeding to admit or plead no contest to the jurisdiction allegations or submit the jurisdiction determination to the court based on the information provided to the court. (Rule 5.682, subd. (d).) The rule further

provides that after admission, plea of no contest, or submission, the court must make a number of findings, including that "[t]he child is described by one or more specific subdivisions of section 300." (*Id.*, subd. (e)(9).) Keith contends that to the extent the rule permits the court to find that a child comes within the jurisdiction of the dependency court based on the parent's admission or no-contest plea, the rule is "inconsistent with the underlying intent" of the dependency scheme and "invalid." While it suffices to say that we are unpersuaded by all of his arguments in support of this theory, we note that the argument is particularly inapplicable here, where the court made the requisite finding—that Liam had suffered, or was at a substantial risk of suffering, serious harm due to his parents' conduct. Further, the procedure is in fact consistent with the intent of the dependency scheme, since "a principal goal of the dependency case" is to "facilitate family reunification" (*In re Eric A.* (1999) 73 Cal.App.4th 1390, 1394), a goal this procedure expedites. And Keith provides no support for his claim that the procedure results in adjudications that are "unwarranted."

Lastly, there was a sufficient factual basis for the court's finding that Liam suffered serious harm, or was at a substantial risk of suffering serious harm, due to his parents' conduct. In addition to Keith's no contest plea, which he entered into with the knowledge that as a consequence the court would likely find the petition true, his counsel stipulated that there was a "factual basis for a finding of jurisdiction based on information contained in the detention/jurisdiction report," and the court stated that based on its own reading of the detention/jurisdiction report there was a basis for jurisdiction. In light of all this, we have no qualms affirming the court's jurisdiction order.

The Juvenile Court Did Not Err in Suspending Visitation

In addition to challenging the process the court employed in taking jurisdiction over Liam, Keith also challenges the disposition order to the extent it maintained the suspension of his visits with Liam pending his completion of a comprehensive psychiatric evaluation and his engagement in the recommended treatment. We review the court's

factual findings for substantial evidence and its visitation order for abuse of discretion.[7] (*In re Daniel C. H., supra,* 220 Cal.App.3d at pp. 837–839.)

As Keith correctly notes, and as widely recognized, visitation is an "essential component of a reunification plan . . . ." (*In re Mark L., supra,* 94 Cal.App.4th at p. 580.) Pursuant to section 362.1, subdivision (a)(1)(A), a disposition order granting reunification services must provide for visitation between a child and parent "as frequent as possible, consistent with the well-being of the child." Significantly, however, subdivision (a)(1)(B) mandates that "[n]o visitation order shall jeopardize the safety of the child." Thus, "[I]f visitation is not consistent with the well-being of the child, the juvenile court has the discretion to deny such contact." (*In re T.M., supra,* 4 Cal.App.5th at p. 1219.) Well-being includes the minor's emotional health as well as physical health. (*Ibid.*; *In re Matthew C.* (2017) 9 Cal.App.5th 1090, 1101; *In re Mark L., supra,* 94 Cal.App.4th at p. 581.)

Keith's fundamental argument is that there was no evidence his visits placed Liam at risk of harm. In his words, "Here, the visits were not detrimental to Liam *at all*. Liam loved them. He loved [Keith]. [Citation.] The risk that [Keith] would in fact go beserk [*sic*] at a supervised visit and cause harm to Liam was, to describe it most charitably, completely speculative." We, like the juvenile court, view the record differently.

Keith had engaged in domestic violence in front of Liam on multiple occasions, including spanking B.B. and assaulting the paternal grandfather. He had also placed Liam's physical safety squarely at risk by attempting to grab the steering wheel of a car being driven by the maternal grandmother and steer the car into a guardrail while he and Liam were passengers. He had further demonstrated his propensity for violence by

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[7] Courts have applied a variety of standards when reviewing a visitation provision in a disposition order, from abuse of discretion (*In re Brittany C.* (2011) 191 Cal.App.4th 1343, 1356; *In re R.R.* (2010) 187 Cal.App.4th 1264, 1284; *Los Angeles County Dept. of Children & Family Services v. Superior Court (David P.)* (2006) 145 Cal.App.4th 692, 699, fn. 6), to substantial evidence (*In re Mark L.* (2001) 94 Cal.App.4th 573, 580–581), to a blended standard (*In re Daniel C. H.* (1990) 220 Cal.App.3d 814, 837–839; see *In re T.M.* (2016) 4 Cal.App.5th 1214, 1219). We believe the hybrid standard is most appropriate.

issuing death threats against social worker Sokhi and the maternal grandmother and aunt. There were significant concerns about Keith's volatility and unaddressed mental health issues. And domestic violence liaison Gray believed that once Keith identified a person as hostile, he might inflict physical violence on that person, either because he was unable to self-regulate or because he believed it an appropriate response. This history provides ample support for the court's finding that Liam was at risk of both physical and emotional harm during visits with Keith, and we have no difficulty upholding the juvenile court's order maintaining suspension of his visitation.

We also note that as to Keith's assertion that any risk of harm was "completely speculative," the court was most certainly under no obligation to wait until Liam was in fact harmed during a visit to then suspend visitation. As the court aptly put it, "I don't know how we plop the child into an environment where father will not find himself triggered with the hopes that everything will go well and we will all cross our fingers and hold our breath that dad will not become triggered by something, act impulsively and harm someone in the presences—let's assume he wouldn't possibly do anything to his child, but he'd sure like to do something to the person supervising the visit or the maternal grandparents showing up delivering the child for that visit. That places this child in my view squarely at risk of harm." The court's reasoning was sound.

Case No. A154828

Keith's second appeal is from the June 11, 2018 six-month review order in which the court continued reunification services for both parents. He presents three challenges: (1) because the juvenile court erred in finding the jurisdiction allegations true based on the parents' no contest pleas, the orders made at the six-month review were without legal basis; (2) because the disposition order suspending visitation was improper, he was not provided reasonable services during the six-month review period; and (3) the juvenile court's finding of reasonable services during the six-month review period was unsupported by substantial evidence because he was not offered a psychiatric evaluation in a timely fashion. Because we have rejected his argument that the jurisdiction and

disposition orders were erroneous, his first and second claims necessarily fail. We thus address only his third claim—and conclude it fails as well.

When providing reunification services, the Bureau must make a good faith effort to provide reasonable services " ' "specifically tailored to fit the circumstances of each family" ' " and " ' "designed to eliminate those conditions which led to the juvenile court's jurisdictional finding." ' " (*In re K.C.* (2012) 212 Cal.App.4th 323, 329; accord, *Patricia W. v. Superior Court* (2016) 244 Cal.App.4th 397, 420.) At the six-month review, the juvenile court must rule on whether the Bureau provided "reasonable services" to the parent during that review period. (§§ 366, subd. (a)(1)(B); 361, subd. (e); Cal. Rules of Court, rule 5.708(c).) "To support a finding reasonable services were offered or provided, 'the record should show that the supervising agency identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained *reasonable* contact with the parents during the course of the service plan, and made *reasonable* efforts to assist the parents in areas where compliance proved difficult. . . .' " (*Tracy J. v. Superior Court* (2012) 202 Cal.App.4th 1415, 1426; accord, *In re Riva M.* (1991) 235 Cal.App.3d 403, 414; see generally *T.J. v. Superior Court* (2018) 21 Cal.App.5th 1229, 1240; *In re K.C.*, *supra*, 212 Cal.App.4th at p. 329.)

We review the juvenile court's finding that the Bureau provided Keith reasonable services for substantial evidence.[8] (*Patricia W. v. Superior Court* (2016) 244 Cal.App.4th 397, 419–420; *In re Alvin R.* (2003) 108 Cal.App.4th 962, 971; *In re Monica C.* (1995) 31 Cal.App.4th 296, 306.) In doing so, we view the evidence in the light most favorable to the juvenile court's ruling, resolving conflicts and indulging all

[8] Keith argues for 13 pages that the proper standard of review of a reasonable services finding is not substantial evidence but rather a hybrid standard "in which the trial court's *findings of historical or physical fact* is reviewed under the substantial evidence test but the trial court's *determination* of whether the case plan and services provided or offered to the parent satisfy the legal standard of *reasonable services for reunification* is independently reviewed, because the latter 'requires a critical consideration, in a factual context, of legal principles and their underlying values.' " Simply put, he is wrong, as every case we reviewed confirms.

reasonable inferences in favor of the finding. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545.)

Keith's case plan required him to complete individual counseling, a domestic violence program, a parenting education class, an anger management program, random drug/alcohol testing, and a comprehensive psychiatric evaluation. The court also suggested that the Bureau consult with domestic violence liaison Steve Gray. Consistent with that, the Bureau provided Keith referrals for drug/alcohol testing, parenting education, domestic violence education, an anger management program, individual therapy, and a psychiatric evaluation, and also arranged for him to be evaluated by Gray. The deficiency in this, according to Keith, was in the scheduling of the psychiatric evaluation: while the referral was made in a timely fashion, there was a four-month delay in the evaluation actually commencing, which delay is the focus of Keith's challenge to the court's reasonable services finding. That delay does not compel reversal of the court's reasonable services finding.

First, courts have consistently recognized that reunification services need not be perfect. (*Elijah R. v. Superior Court* (1998) 66 Cal.App.4th 965, 969.) "The standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances." (*In re Misako R., supra,* 2 Cal.App.4th at p. 547.) Thus, the fact that one service out of the many provided was delayed did not necessarily mean the Bureau had not provided reasonable services.

Second, as noted, the Bureau must make a "good faith effort" to provide reasonable services. It did so here, promptly providing the referral but then later having to make additional referrals after being stymied by, as the court put it, a "funding issue."

Third, while the psychiatric evaluation was admittedly delayed, it commenced on April 23, at which point there were two months remaining in the review period. Thus, the service about which Keith complains was in fact provided.

Finally, while Keith apparently attended two sessions with the psychiatrist, he told Coughlin in mid-May that he did not know if he wanted to continue with services, and as a result a third session scheduled for June 4 did not happen. Keith can hardly be heard to

complain that a service was not timely provided when he ceased engaging in that service (and others) shortly after it was provided.

In light of these circumstances, we conclude the juvenile court's reasonable services finding is supported by substantial evidence.[9]

Case No. A155768

A. Keith's Petition for Extraordinary Writ

Keith's petition for extraordinary writ asserts two arguments. First, he contends that because the jurisdiction determination was error, as argued in his first appeal (No. A153357), all subsequent orders, including those made at the 12-month review hearing, lack legal basis and must be reversed. Again, because we have rejected his argument regarding his no contest plea and the court's jurisdiction finding, we reject this argument as well.

Second, Keith contends that the juvenile court's reasonable services finding at the 12-month review hearing is unsupported by substantial evidence, again focusing on delays in the psychiatric evaluation. According to him, the evaluation had not occurred as of the 12-month hearing, and the "delays were not the fault of the father." The record contains evidence, however, that Keith was in fact largely responsible for the evaluation not progressing once it had commenced. As noted above, the evaluation began in April 2018 but by mid-May Keith was uncertain whether he wanted to continue with his services. The evaluation thus came to a halt. Keith apparently reengaged, but there were scheduling issues with the evaluator so the Bureau referred him to another evaluator. Coughlin testified at the 12-month contested review hearing that the evaluator had

[9] Keith also argues that even though the court continued his reunification services, he was nevertheless aggrieved by the allegedly erroneous reasonable services finding, discussing three cases with differing views on whether a parent may challenge a reasonable services finding where services were continued. (See *In re T.W.-1* (2017) 9 Cal.App.5th 339, 345, fn. 6; *In re T.G.* (2010) 188 Cal.App.4th 687, 691–692; *Melinda K. v. Superior Court* (2004) 116 Cal.App.4th 1147, 1153–1154.) Because we conclude the finding was supported by substantial evidence, we need not weigh in on this debate.

attempted to contact Keith on multiple occasions, to no avail. Keith cannot now cry "unreasonable services" when the Bureau attempted to provide the service but he chose not to participate in it.

B. B.B.'s Petition for Extraordinary Writ

In her petition for extraordinary writ, B.B. presents the following four challenges to the juvenile court's termination of her reunification services at the 12-month contested review hearing: (1) the juvenile court's finding that there was no substantial probability of return by the 18-month mark is not supported by substantial evidence; (2) the court committed reversible error when it failed to make the necessary reasonable services finding prior to terminating B.B.'s reunification services; (3) the court abused its discretion when it reduced her visits with Liam upon terminating reunification services; and (4) the findings and orders from the contested 12-month review hearing must be reversed if we reverse the jurisdiction and disposition findings and orders as Keith urges in case No. A153357. We address these arguments in turn and reject each one.

1. Substantial Evidence Supports the Juvenile Court's Finding that There Was No Substantial Probability of Return by the 18-Month Mark

When a dependent child cannot be returned to parental custody at the 12-month review hearing, the juvenile court must continue reunification efforts to the 18-month mark if there is a substantial probability that the child may be returned and safely maintained in the home within the extended time frame. (§ 366.21, subd. (g).) A substantial probability of return exists when a parent has: (1) consistently and regularly contacted and visited with the child; (2) made significant progress in his or her case plan activities and in resolving the problems that led to the child's removal; and (3) shown the capacity and ability to complete his or her case plan and provide for the child's safety, protection, physical and emotional well-being, and special needs. (§ 366.21, subd. (g)(1)(A)-(C).) The court here found that B.B. had neither made significant progress in resolving the problems that led to Liam's removal nor shown the capacity to meet her case plan objective or safely care for Liam, and thus that there was no substantial probability Liam would be returned to her care by the 18-month mark, which was two

months from the contested 12-month review hearing. We review the court's finding for substantial evidence (*Kevin R. v. Superior Court* (2010) 191 Cal.App.4th 676, 688; *James B. v. Superior Court* (1995) 35 Cal.App.4th 1014, 1020), and conclude the finding is adequately supported.

As the record discloses, B.B. made progress on many components of her case plan. The sustained allegation against her alleged that she had unresolved substance abuse issues with marijuana that impaired her ability care for and protect Liam. At the time of the hearing, however, there was no evidence of ongoing substance use, with B.B. having received approximately 40 negative drug test results in the time social worker Coughlin had been handling the case. She had completed a parenting class and was positively parenting Liam during visits. She was actively engaged in therapy and domestic violence services, with her therapist reporting she had made significant progress and showed better insight and ability to deal with stressful situations. She was employed and taking courses at a community college. Despite these commendable accomplishments, however, there was one very significant area of concern that drove the court's finding: B.B.'s inadequate progress in understanding and absorbing the nature of domestic violence.

As the court very vigorously detailed when it terminated services, B.B. was still living with Keith at the time of the Bureau's 12-month review report, and only moved out a mere two months before the contested hearing. When she did move out, she moved in with Keith's parents, with whom Keith has a volatile and violent relationship. Shortly after she moved out, she attended a concert with Keith, and even after that she maintained telephone contact with him so they could update each other on how Liam was at their respective visits. Additionally, the court was concerned about B.B.'s minimization of the domestic violence in her relationship with Keith. But perhaps the most troubling of all was B.B.'s testimony that "[a]s of right now," she did not intend to reunite with Keith if Liam were returned to her care, but she left open the possibility of doing so in the future if he resolved his mental health issues. These and other examples exemplify what the court described as B.B.'s "complete lack of insight and accountability as to what led to

the Court's intervention in the first place . . . ." They exemplify her lack of understanding of the risk of harm Keith continued to present. And they support the court's belief that she "checked off boxes" and "engaged in services," but had not met the objectives of her case plan. Thus, B.B. did not have a passing grade in the area of greatest concern, let alone "straight A's." (See *David B. v. Superior Court* (2004) 123 Cal.App.4th 768, 790 ["We are looking for passing grades here, not straight A's"].) And in the end, all of this is substantial evidence supporting the court's findings that B.B. had neither made *significant* progress in resolving the problems that led to Liam's removal, nor shown the capacity to meet her case plan objective or safely care for Liam within two months.

2. There is Substantial Evidence the Bureau Provided Reasonable Services[10]

In her second argument, B.B. contends that the juvenile court committed reversible error by failing to find that the Bureau provided reasonable services during the reporting period, a mandatory finding before the court can terminate reunification services. As she correctly notes, the juvenile court may not terminate services and set a section 366.26 permanency hearing unless it finds by clear and convincing evidence that the Bureau offered reasonable services. (§ 366.21, subds. (f), (g)(1)(C)(ii).) She is also correct the court made no such finding here. Because the court did not follow the recommendations of the Bureau as to continuing B.B.'s services, it did not adopt the Bureau's proposed written findings and orders, which included the requisite finding regarding reasonable services. Instead, it directed the Bureau to prepare findings and orders consistent with the court's oral ruling, but no such written findings and orders appear in the record. This oversight does not necessitate reversal, however, because where the court fails to make a reasonable services finding, its order may nevertheless be

[10] While the Bureau opposes Keith's petition, it does not oppose B.B.'s petition, since it recommended continued reunification services for her at the 12-month review hearing and it claims it "cannot change its position at the appellate level." B.B.'s argument that the Bureau failed to provide her reasonable services would have been an appropriate issue on which to submit briefing since the Bureau took the position below that it had provided reasonable services during the review period.

upheld if there is substantial evidence to support an implied finding, such that the court's error was harmless. (*In re Abram L.* (2013) 219 Cal.App.4th 452, 463, fn. 5; *In re J.S.* (2011) 196 Cal.App.4th 1069, 1078; *In re Jason L.* (1990) 222 Cal.App.3d 1206, 1218.) That is the case here.

B.B. points to three alleged deficiencies in the Bureau's provision of services that she contends defeat a finding of harmless error. She first argues that "[i]t is abundantly clear from the record in this case that [Keith's] mental health and resulting volatility presented a significant challenge. The court itself pointed to [B.B.'s] perceived lack of insight into his issues and lack of protective capacity as a basis for its termination of [B.B.'s] services. [Citation.] Yet there is no evidence in the record that [B.B.] was ever referred to services aimed at helping her better understand [Keith's] *mental health* or the impact it had or could have on her and [Liam]." B.B. was provided, and engaged in, individual counseling to aid her in understanding the factors that led to the dependency, and a domestic violence program to aid her in understanding the nature of her and Keith's relationship and in breaking free from the cycle of domestic violence. Helping her understand how Keith's behavior impacted her and Liam would have been part and parcel of both of those services. B.B. does not explain why she thinks individual therapy and domestic violence counseling were inadequate in helping her understand Keith's behavior, whatever its origin, nor does she specify what additional service would have supplied that allegedly missing support.

B.B. also notes that her initial case plan called for a mental health evaluation, but she claims one was never arranged for her. She contends that "[s]uch an evaluation could have better informed the services provided to [her] and provided a clearer path to reunification." In fact, the Bureau's disposition report states that she was provided a mental health referral. Beyond that, nothing in record suggests B.B. had mental health issues that contributed to the dependency proceeding. And we see nothing unclear—nor does B.B. identify anything unclear—about the path to reunification that would have been clarified by a mental health evaluation.

Finally, B.B. contends that in order to reunify with Liam she was required to obtain separate housing from Keith but the Bureau offered her no help in finding alternative housing. B.B.'s housing situation was not one of the reasons Liam was removed from her care, and there was thus no reason for housing assistance to be identified in her case plan as a service the Bureau needed to provide. (Contra *T.J. v. Superior Court* (2018) 21 Cal.App.5th 1229, 1247–1248 [no reasonable services where disposition order required mother to secure housing but agency offered her no assistance in finding suitable housing]; *In re Victoria M.* (1989) 207 Cal.App.3d 1317, 1328–1329 [no reasonable services where, among other things, case plan required special needs mother with limited income to find a residence but minimal housing assistance was provided].) Rather, B.B.'s and Keith's shared living arrangement became an issue as the case proceeded and it became evident that B.B. was progressing more rapidly with her case plan objectives than Keith and that separate housing might be necessary in order for her to reunify with Liam. B.B. does not cite evidence in the record demonstrating that she lacked the resources to obtain separate housing, and that if so, she communicated this to the Bureau and requested assistance in finding suitable housing. While a parent is not "required to complain about the lack of reunification services as a prerequisite to the [Bureau] fulfilling its statutory obligations" (*Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1014), if B.B. needed assistance and her need for assistance was not evident to the Bureau, she should have raised it with the social worker. Further, while B.B. would have us believe her failure to move out of the shared home was due to the Bureau's failure to provide housing assistance, the record suggests she did not move out earlier than she did because she did not want to separate from Keith and she desired to reunify with Liam as a family.

3. The Court Did Not Abuse Its Discretion in Reducing B.B.'s Visits with Liam

B.B.'s third argument is that the juvenile court abused its discretion when, upon terminating reunification services, it reduced her visits with Liam from weekly overnights to a minimum of two one-hour visits per month. She contends that neither the law nor

the facts of this case required it. While the reduction in visitation was indeed not *required*, B.B. has also not demonstrated it was an abuse of the trial court's discretion. (See *In re Emmanuel R.* (2001) 94 Cal.App.4th 452, 465 [visitation order reviewed for abuse of discretion].)

While visitation is, as noted above, an "essential component of a reunification plan" (*In re Mark L.*, *supra*, 94 Cal.App.4th at p. 580), where the parent is unsuccessful and the court terminates reunification services, "the parents' interest in the care, custody and companionship of the child are no longer paramount." (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317; accord, *In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) At this time, "the focus shifts to the needs of the child for permanency and stability." (*Marilyn H.*, at p. 309.) Nevertheless, pursuant to subdivision (h) of section 366.21, when reunification services are terminated and a section 366.26 hearing set, "[t]he court shall continue to permit the parent or legal guardian to visit the child pending the hearing unless it finds that visitation would be detrimental to the child." The juvenile court determines "when, how often, and under what circumstances visitation is to occur." (*In re Shawna M.* (1993) 19 Cal.App.4th 1686, 1690.)

Here, the court ordered a minimum of two visits per month, which complied with section 366.21's mandate of continued visitation. It made this decision after hearing from all counsel and in consideration of the circumstances of the case. B.B. objects that the reduction in visitation harms her ability to establish the parent-child beneficial relationship exception to termination of parental rights, but, as noted above, her "interest in the care, custody and companionship of [Liam is] no longer paramount." (*In re Stephanie M.*, *supra*, 7 Cal.4th at p. 317.) She was still afforded regular, meaningful visitation—albeit less frequently than during the review period. She has not shown an abuse of discretion.

4. Keith's Appeal from the Jurisdiction and Disposition Orders Lacks Merit

Lastly, B.B. contends that if Keith's appeal from the jurisdiction and disposition orders (No. A153357) is meritorious, reversal of those orders will necessitate reversal of the 12-month review order. As we have concluded above, that appeal is without merit.

DISPOSITION

The jurisdiction, disposition, and six-month review orders are affirmed. Both parents' petitions for extraordinary writ relief are denied. As to the denial of the writ petitions, our decision is final as to this court immediately. (Cal. Rules of Court, rule 8.490(b)(2)(A).)

The stay of the section 366.26 hearing is hereby dissolved.

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Richman, J.

We concur:

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Kline, P. J.

_____
Miller, J.

In re Liam O. (A153357; A154828; A155768)